

# **EXHIBIT B**

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*Attorneys for Defendant/Counterclaim Plaintiff Trunk Archive*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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BEST LITTLE SITES, d/b/a  
COMICBOOKMOVIE.COM,

Plaintiff,

v.

GREAT BOWERY, d/b/a TRUNK  
ARCHIVE,

Defendant.

**RULE 26 INITIAL DISCLOSURES**

Case No. 2:19-cv-00319

Magistrate Judge Dustin B. Pead

GREAT BOWERY, d/b/a TRUNK  
ARCHIVE,

Counterclaim Plaintiff,

v.

BEST LITTLE SITES, d/b/a  
COMICBOOKMOVIE.COM, and DOES 1  
through 10, inclusive

Counterclaim Defendants.

Pursuant to Fed. R. Civ. P. 26(a)(1), Defendant and Counterclaim Plaintiff Great Bowery d/b/a Trunk Archive (“Trunk”) provides its initial disclosures to Plaintiff and Counterclaim Defendant Best Little Sites d/b/a ComicBookMovie.com (“CBM”). These disclosures are based on Trunk’s preliminary understanding of the facts. Trunk reserves the right to supplement or amend these disclosures, including pursuant to Fed. R. Civ. P. 26(e), after learning more about the nature and details of the facts.

**I. Individuals Likely to Have Discoverable Information**

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), Trunk discloses the following individuals likely to have discoverable information. Trunk reserves the right to amend or supplement these disclosures, including as provided by Fed. R. Civ. P. 26(e). The following disclosures do not include persons whose testimony is likely to be used solely for impeachment, rebuttal, or expert witness testimony, who will be disclosed in accordance with the schedule set by the Court or the Federal Rules of Civil Procedure:

1. Leslie Simitch, Executive Vice President, Trunk Archive c/o Higbee & Associates, 1504 Brookhollow Drive, Suite 112, Santa Ana, CA 92705; Information regarding Trunk’s licensing practices, the licensing of the photographs at issue;
2. Annie Liebovitz, c/o Leibovitz Studio Inc., 547 W 26th St., New York, New York 10001-5503; Information regarding the creation of the photographs at issue.

**II. Description of Documents and Things in Trunk’s Possession, Custody, or Control That May Be Used to Support Trunk’s Claims**

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii), Trunk hereby discloses the following documents and things in its possession, custody or control that it may use to support its claims and defenses. Trunk reserves the right to amend or supplement these disclosures as provided under Fed. R. Civ. P. 26(e). The following disclosures do not include documents and things that are likely to be offered solely for impeachment:

1. Trunk’s Answer and Counterclaim, and all documents attached thereto.

2. Documents regarding the copyright registration of the photographs at issue.
3. Documents regarding the licensing history for photographs at issue.
4. Documents regarding the use of the photographs on the website at issue.
5. Any documents or things produced or provided by Defendants.

### **III. Comutation of Damages**

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), Trunk discloses that it is entitled to recover damages in the form of, *inter alia*, actual damages and CBM's profits or statutory damages pursuant to 17 U.S.C. § 504(b) and (c) at Trunk's election, attorneys' fees and costs pursuant to 17 U.S.C. § 505, and interest based on Trunk's claims. Trunk anticipates that damages calculations will depend upon evidence and testimony to be developed and disclosed according to the schedule set by the Federal Rules of Civil Procedure and the Court.

### **IV. Insurance Disclosure**

The insurance agreement covering the claims made by CBM against Trunk can be made availabel by Trunk for inspection and copyring at a date and time mutually agreeable to both parties.

### **V. Reservation of Rights**

Trunk reserves the right to amend or supplement these disclosures as provided by Fed. R. Civ. P. 26(e) and to object to the admissibility of any document or statement herein or in Defendant's initial disclosures on all bases set forth in the Federal Rules of Civil Procedure, Federal Rules of Evidence, and governing law.

Dated: August 23, 2019

Respectfully submitted,  
/s/ Mathew K. Higbee  
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